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37th meeting of the First Committee

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37th meeting

Tuesday, 14 September 1976 at 3.30 p.m.

Chairman: Mr. P. B. ENGO (United Republic of Cameroon).

In the absence of the Chairman, Mr. Wuensche (German Democratic Republic), Vice-Chairman, took the Chair.

Final report by the Co-Chairmen on the activities of the workshop (concluded) (A/CONF.62/C.1/WR.5 and Add.1)

1. Mr. VILLAGRAN KRAMER (Guatemala) said that the report of the Co-Chairmen of the workshop had led to the clarification of many positions and the expression of others. In that connexion, he noted with appreciation the statements made by the members of the European Economic Community, in particular by the delegation of the Federal Republic of Germany.
2. The contribution which a small developing country could make in the First Committee was in direct relation to its desire to provide ideas designed to expedite or shape a compromise in order to open the way to economic and social development and to secure a rightful share of the benefits deriving from the exploitation of the sea-bed. From that point of view, the report of the Co-Chairmen should be considered in a global context so as to maintain an over-all perspective. The Third United Nations Conference on the Law of the Sea had embarked on the specific consideration of two economic heritages—one the exclusive heritage of the coastal State and the other situated outside the jurisdiction of that State which was the common economic heritage of mankind and which, therefore, could not be divided and which could be regulated only from the standpoint of the establishment of a new international economic order. That fact placed the matter in a confrontation context, so that the work of the First Committee reflected what was taking place at all levels of debate regarding the establishment of a new international economic order—whether it be in the United Nations Conference on Trade and Development, the General Assembly, the Conference on the Law of the Sea, or its First Committee—i.e. the adoption of positions which pointed to the existence of blocks consisting of the market-economy developed countries, the planned-economy developed countries and the third world represented by the Group of 77.
3. Despite the confrontation between blocks, there was agreement with regard to the establishment of the Authority and the Enterprise. As a result of the discussions in the Workshop, the developed countries appeared more inclined to support the strengthening of the Authority and the Enterprise. Faced with the concern of the developed countries that a strong Authority might lead to arbitrary action or abuses of power, the countries of the Group of 77 had demonstrated their readiness to provide for appropriate regulation of its functions and powers. They were not even categorically opposed to considering appropriate controls to ensure the legality of the acts of the Authority, which was one of the principal points maintained by his delegation. In respect of the Enterprise, important statements had been made by many developed countries, including those currently possessing the technology needed for the exploration and exploitation of the sea-bed, to the effect that they were prepared to consider ways in which the transfer of technology to the Enterprise and to the developing countries could be carried out.
4. In his view, the difference between the various positions was not the existence of a strong Enterprise or its actual area of activity, but the question of access to the zone—the so-called parallel system. In that connexion, he noted that the Group of 77 had stated that it could not accept the parallel system as provided in the revised single negotiating text (A/CONF.62/WP.8/Rev.1),¹ and that the delegations of the United States and the Soviet Union, as indicated in their statements, also rejected the parallel system in the form provided in that text. It was apparent that no consideration had yet been given to identifying parallel systems other than that set forth in the revised single negotiating text. The Soviet delegation had expressed the view that the Group of 77's proposal placed States on an equal footing with public or private enterprises. Guatemala, as a sovereign State, did not wish to be placed on the same footing as a private enterprise of another State, but in addition to sovereign States, there were the transnational corporations, attempts to regulate the operations of which, to one degree or another, were being made in various international forums. Consequently, his delegation had supported the Group of 77 proposal which sought the establishment of a framework for the regulation of the transnational corporations' activities relating to the sea-bed.
5. His delegation felt that document A/CONF.62/C.1/L.17 should be accorded careful and detailed consideration. In that connexion he drew the Committee's attention to paragraph 42 of that document.
6. From the outset, his delegation, like other delegations, had favoured the idea of considering jointly articles which, although they might not necessarily be related to one another, were of great importance. That approach would make it possible not only to have a more complete picture but also to study the possibility of a "package deal". The future negotiations might be oriented in that direction.
7. Referring to future methods of work, he said there were two points which should be noted. The first was the need to bear in mind what the United States delegation had said (35th meeting) as to whether or not the "last four weeks" had been reached, since that situation would make it possible to initiate frank and open negotiations. In his view, that final stage of the Committee's work had not yet been reached. The second point was the working procedure. His delegation thought that the method employed thus far had not been productive and that consideration could be given to the possibility of adopting some other method, similar to that used at Geneva, in tackling the question of the exclusive economic zone. The model to which he wished to draw the attention of the Committee was that of the group known as the Evensen group and, in the event of the establishment of a group of that type, consideration could be given to the possibility of placing it under the leadership of the representative of Norway.
8. Mr. KOIKE (Japan) said that his delegation wished to draw the Committee's attention to the first sentence of paragraph 1 of document A/CONF.62/C.1/WR.5/Add.1 which set out what was in fact the central question of concern to the Committee. A number of delegations which had spoken had stated that that was a political question, a view which was shared by his delegation. Unless an agreement was reached on that crucial question, it would not be possible to have a convention which would command general support.

¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8).

9. The position taken by his delegation at Caracas had been based on the so-called licence system. At that time, his delegation had been opposed to the idea that the role of the Authority should go beyond the issuing of licences. After long and hard negotiations at Caracas, at Geneva and in New York, it was no longer opposed to the creation of the Enterprise and could support the idea. Its support, however, was linked to the fulfilment of a minimum requirement, namely, the provision of a reasonable guarantee of access for States parties and other entities to mining sites. The desire for that minimum requirement was based on very practical considerations and not on any ideological beliefs. If there was genuine interest in translating the common heritage of mankind into reality, certain facts of life had to be taken into account. Deep-sea mining was a new frontier where the pioneers faced great risks in terms of the long preparation and the considerable investment involved. Any attempt to create additional artificial risks must be avoided. Instead, an environment and conditions should be created which offered the necessary incentives to pioneer industries or States parties which were willing to take the risks of investing human and financial resources. His delegation was advocating not automatic access but the provision of a reasonable guarantee in the convention.

10. Although the positions of the developing countries and the developed countries were still divergent, they might not be so far apart as they seemed. Even on the issues regarding which opinions differed most widely, it was possible to narrow the differences down to a point where a reasonable compromise could be reached. The First Committee had become accustomed to hearing a number of slogans such as "parallel system", "automaticity", "discretion of the Authority" and so on. It was necessary, first of all, to analyse what was meant by such slogans and to examine the objective criteria according to which the Authority would function. Once that had been done, the area of disagreement could be reduced, and only then would each delegation be in a position to make political decisions.

11. With regard to the next session, his delegation shared the opinion that the Committee should devote its time to questions of substance rather than of procedure. He hoped that at the next session consideration would be given to other issues, such as the Statute of the Enterprise and the Council, since the issues dealt with by the First Committee were closely interrelated and therefore the various issues must be examined in their totality. Well-organized intersessional meetings would prove to be very useful in making preparations for the next session, and his delegation supported the idea of holding such meetings. The First Committee should not allow itself to fall behind the other committees in its work. In that connexion, his delegation had been much encouraged by the remarks made by representatives of the developing countries the preceding week and at the current meeting.

12. Mr. BAVAND (Iran) said that a number of factors had to be appreciated if the existing difficulties were to be overcome. First and foremost, it was necessary to move towards a greater understanding and interpretation of the basic philosophy of the sea-bed régime, namely, the principle of the common heritage of mankind. Its meaning was to be derived from its independent nature rather than from the provisions of the convention and the relevant provisions of its annexes taken together. His delegation continued to believe that articles 9 and 22, which were the pillars of the system of exploitation, should be viewed as autonomous principles which would have determining effects on the other provisions of the convention and the relevant provisions of annex I. It logically followed that any system of exploitation which might be agreed upon should be developed within the legal framework of article 22, as had been suggested by the Group of 77. Although a form of association which incorporated various methods and kinds of exploitation might be worked out, the omnipotent nature of the Authority as reflected in article 22,

paragraph 1, must be strictly preserved and maintained. It also followed logically that the relevant provisions of annex I were to be viewed as complementary to the régime and as the tangible conditions for the effective implementation of the basic principles of the régime, consonant with the economic, technical and political realities of the times. Therefore, the provisions of the annex should not in any way be taken to be instruments for offsetting or negating the basic meaning of articles 9 and 22 or for limiting the fundamental powers and functions of the Authority. If agreement could be reached on those three basic elements, the Committee would be on the threshold of an agreement.

13. The second element which should be given special consideration was the nature of intragroup and intergroup relations, which indeed had a determining effect on the character and method of future negotiations. Experience had shown that care should be taken to avoid any procedure which might further undermine intragroup relations and intergroup communications and hence be detrimental to open, democratic and business-like negotiations.

14. Mr. RAJAONARIVELO (Madagascar) said that in the negotiations conducted at the last two sessions in New York each participant had seemed to be trying to sound out the position of the others. That had provided an opportunity for each group of States and each Government to set forth once again their positions on the various issues under discussion; the fact was, however, that every delegation had known what its own position was, as well as the position of other delegations, even before the second session had been convened at Caracas. Developments at the third session at Geneva could constitute the basis for the beginning of genuine negotiations. His delegation had believed that the holding of the current session was premature and that letting a sufficiently long period of time elapse would have allowed for reflection, for finding better ways to give effect to the acknowledged principles governing exploitation in the international zone and even for making fair concessions.

15. He wished to set forth once again a number of principles to which his delegation attached great importance, in view of the fact that a many-faceted interpretation, cleverly designed to deprive those principles of their true meaning, had been set before the Committee. In that connexion, he asserted that the starting point for future discussions must be an exact definition of the principle of the common heritage of mankind. Once agreement was reached regarding its meaning, all the corollaries of that principle would be easily understood. Accordingly, there would be no doubt that the Authority would be the sole international juridical person having the right to administer the common heritage; the Authority must have discretionary powers over all activities carried out in the international area; no special privileges could be claimed for any particular State or States; it was inadmissible to grant absolute freedom of access to the area to transnational companies. It would, in fact, be contradictory to assert that the Authority represented mankind and at the same time to allow such companies free access to mine in the international area.

16. The group of developing countries to which Madagascar belonged had prepared workshop paper No. 1, which it had made many concessions, reaffirming thereby the Group of 77's willingness to negotiate. A comparison of workshop paper No. 1 with the two others made it clear that it was unreasonable to blame intransigence on the part of the developing countries for the lack of progress.

17. The problem would not be solved if an attempt was made to finance the Enterprise, on the one hand, and to permit parallel exploitation, on the other. The financial contribution would in that case be no more than a symbol which would not enable the Enterprise to function as a standing and operational entity. The problem concerned the confidence placed in the Authority. If the developed countries believed in the Authority as the representative of mankind, without letting them-

selves be duped by certain privileged interests involved in the exploitation of the international area, it would be possible to strengthen the Authority. What was needed was to find in the near future, and regardless of relative level of development, the necessary means to express that confidence by granting the Authority the appropriate financial and technical resources so that no member State would be disadvantaged with respect to another.

18. It would make sense to hold an intersessional meeting if progress was made so that all that remained was to reconcile certain differences of detail. With respect to procedural questions, he would maintain a flexible approach but would not agree to separate the First Committee's problems from the other questions discussed at the Conference.

19. Mr. SARAIVA GUERREIRO (Brazil) said that the report by the Co-Chairmen made it possible to reach certain conclusions with respect to the relative success or failure of the session. Although the fact that no agreement had been reached on a text could be regarded as a failure, the work of the First Committee had at least served to identify the views of various delegations with respect to the system of exploitation of the international area. Those views, which reflected the real needs and interests of the countries, would make it possible eventually to prepare a satisfactory and generally accepted convention. Brazil believed that the developing countries should enjoy special preferences and advantages within the system of exploitation in order that the principle of the common heritage of mankind might be implemented. For that purpose it was essential to set up efficient machinery for the transfer of technology to those countries, as well as a system which would enable them to carry out activities in the area in co-operation with the Authority. The current lack of progress should not be attributed to procedural problems, for more concrete results could be achieved if there was a political willingness to negotiate.

20. In conclusion, he said that the Group of 77 had shown its willingness to seek compromises consistent with the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction approved by the General Assembly,² and he expressed the hope that all countries would be guided by the same spirit at the next session.

21. Mr. WUENSCHÉ (German Democratic Republic) said that his delegation had reservations concerning some formulations contained in the report by the Co-Chairmen of the workshop. He completely agreed with the view expressed by the Soviet representative (36th meeting), especially that activities in the Area should be conducted directly by the Authority and by States parties and that States parties must act in conformity with the Convention and with the basic conditions established by the Authority and under its supervision. His delegation felt that workshop paper No. 2 was a good basis for reaching a compromise solution.

22. He emphasized that the process of real negotiations had started even though an agreement had not been reached. It had become clear in the course of the current session that it was impossible to solve political and juridical problems by discussing and clarifying procedural matters. It was therefore essential that in preparation for the next session, political decisions on the basic issues involved should be taken at an early date.

23. With respect to the method of work to be employed at the next session, he did not believe that voting on the matters to be decided could play any role. Since the process of negotiation had just begun, it could not at the same time be stated that the possibilities of negotiation had been exhausted, as provided for, for instance, in article 37 of the rules of procedure. He felt that it was both possible and necessary to

reach a solution which would be acceptable to all States, including the socialist countries, through genuine negotiations and by way of consensus. That was the only way to create a convention which would actually enter into force and which would serve as an effective means of safeguarding peace and strengthening international security. Such a result would not be possible if decisions were taken against one or another of the interest groups represented. That meant that effective methods of negotiation must be found at the next session. He supported what the Chairman of the Committee had noted in underlining the responsibility of the Committee's Chairman and Bureau for the emergence of a text that was acceptable to all.

24. Mr. MAQUIEIRA (Chile) expressed his delegation's concern at the paucity of substantive results obtained at the current session, which was perhaps due to the method of work adopted. Nevertheless, it had been possible to identify more clearly the central problems requiring a political solution and to discern the clear presence of a willingness to negotiate. His delegation felt that the other groups could not ignore the efforts made by the Group of 77 in that connexion, as well as in clarifying their views even further. That clarification had enabled the developing countries to present bases for negotiation which could contribute to a final solution. Such a solution would require better and more effective work methods and the firm intention of the various interest groups to achieve realistic and widely acceptable solutions giving adequate expression to the concept of the common heritage of mankind and to the Declaration of Principles approved by the General Assembly at its twenty-fifth session. As the Chairman of the Committee had stated, it was essential to reach a political agreement on the central questions identified at the current session. Any realistic solution must effectively embody the notion of the common heritage and must not undermine the necessary unity of the Group of 77.

25. Mr. ADIO (Nigeria) felt that the procedure followed in the Committee had not worked well and that the Committee's officers should play a more active part in the negotiations so that they could be responsible to the Chairman for the progress made. His delegation proposed a compromise solution that was midway between the dual system and the system for the conduct of activities in the area by the Authority with the participation of other entities, consisting in a single joint venture. The Nigerian proposal was set out in a paper that was being made available for consideration by delegations and would be formally submitted at the next session.

26. Mr. VANDERPUYE (Ghana) said that the United Nations Conference on the Law of the Sea was basically a great experiment in world-wide co-operation for all peoples. It was therefore paradoxical that the United States of America, a country which benefited enormously from world co-operation, should constitute one of the obstacles to the success of the Conference. At least, that attitude was understandable in view of the capitalist and imperialist nature of that country. But it was less excusable that the Soviet Union, which claimed to be a friend of the developing countries, should also have done nothing to prove that friendship.

27. All that the developing countries asked was to be able to participate through the Authority in the exploitation of the resources of the area, which was the common heritage of mankind. In the elaboration of a fair system for the exploitation of the international sea-bed, the developed countries had an opportunity to show that they understood the difficult situation of the developing countries, but instead they wished to continue to enjoy the privileges they derived from the economic power and technological advances at their disposal.

28. At the current session of the Conference there had perhaps been a tendency to avoid major issues, such as whether or not a decision was to be taken on the system for

² Resolution 2749 (XXV).

the exploitation of the resources of the sea-bed. At the next session the Conference should tackle those basic issues directly instead of wasting time on minor or procedural questions.

Mr. Engo (United Republic of Cameroon) resumed the chair.

29. Mr. PERIŠIĆ (Yugoslavia) said that his delegation thought that the First Committee and the Conference in general was at present faced with a basically political dilemma that had to do not only with the exploitation of the sea-bed but also with raw materials and commodities policies and the relationship between developing and developed countries. He therefore thought that the time had come to take political decisions to solve the problem. Yugoslavia, as well as the majority of developing countries, was of the opinion that any future system for the exploitation of the area must accord with the basic principles of the notion of the common heritage of mankind: indivisibility of the area and direct exploitation of its resources by the Authority and, as determined by it, through associations between the Authority and other States parties or entities. His delegation could not accept the approach taken in workshop papers Nos. 2 and 3 and considered that paper No. 1, submitted by the Group of 77, which represented the definitive position of that Group and also had the support of some developed countries, provided a suitable basis for future negotiations. Workshop paper No. 1 safeguarded the basic principles of the common heritage of mankind and, at the same time, attempted to afford a widely acceptable compromise.

30. The Yugoslav delegation had always upheld the principle that the future régime for the exploitation of the area should not be discriminatory towards any of the existing groups of States, regardless of their social systems. It was also of the view that the proposal of the Group of 77 afforded sufficient possibilities for States parties and State enterprises to participate in the exploitation of the area. It considered also that a strong Authority, having full and effective control over the activities conducted on the international sea-bed, represented a good safeguard against domination of the interests of multinational corporations and the best means of ensuring non-discriminatory participation by the industrialized countries in the exploration and exploitation of the area, provided that that method afforded a genuine opportunity for the transformation of economic relations among States in the future. He wished to stress that, despite the limited results achieved at the current session, it had contributed to a better understanding of the problems involved, and that could facilitate the task of the Conference at the next session.

31. Mr. LI in Gyu (Democratic People's Republic of Korea) said that all developing countries and independent peace-loving countries heartily wished the international sea-bed to be exploited and used for the benefit of all and were strongly opposed to the idea that it should be monopolized by anyone. Those countries also wanted the Authority to carry out the exploitation of the sea-bed in a unitary way. That demand was based on the principle of equality and State independence and truly reflected the interests of all mankind. Therefore his delegation demanded once again that activities on the international sea-bed should be carried out exclusively by a single Authority.

32. With regard to the work of the First Committee at the next session, his delegation considered that there were certain principles that should govern the establishment of a new system for the exploitation of the international sea-bed, namely the principle that the sea-bed was the common heritage of mankind, and the principles of equality between States and mutual respect of sovereignty, etc. At the current stage of the negotiations, the Geneva document was acceptable to his delegation as a basis for the deliberations at the current stage because it coincided with those just principles. He therefore stated that his delegation would welcome a better document than the Geneva document, otherwise it would express opposition.

33. All delegations had the right to express their views but they

should not advocate views that were not supported by the majority. The imperialist maritime Powers were advocating a so-called "parallel system", which was opposed by the majority of countries. His delegation thought that such behaviour was an obstacle to the progress of the negotiations and should not be allowed. All delegations should concentrate their efforts on ensuring that the international sea-bed—the common heritage of mankind—was used effectively for the prosperity of mankind.

34. Mr. KASEMSRI (Thailand) repeated the request he had made when the Secretariat had been asked to prepare a study on the financing of the Authority, namely, that the study should be expanded in order to give the delegations appropriate guidelines regarding the financial arrangements, to ensure that the Authority obtained an adequate income from the activities carried on in the area, without precluding a subsequent more detailed indication of possible incentives, as might be needed for the participation of potential contractors.

35. Mr. ZULETA (Special Representative of the Secretary-General) said that it would not be very difficult for the Secretariat to supplement the study on the financing of the International Authority with some information on the effect of the financial arrangements on the general plan for financing the Authority, in keeping with the guidelines suggested by the representative of Thailand, if the Committee so decided.

36. The CHAIRMAN said that if there was no objection, he would take it that the Committee approved the request suggested by the representative of Thailand.

It was so decided.

Statement by the Rapporteur on the work of the Committee

37. Mr. BAILEY (Rapporteur) read out a draft statement on the work of the First Committee which would be subsequently circulated as an official Conference document under the symbol A/CONF.62/C.1/L.18.

Concluding statement by the Chairman

38. The CHAIRMAN said that as another session of the Committee drew to a close, the task of identifying the scope of the activities carried out had become much lighter, partly because of the limited volume of reportable material and partly because of the record of activities in the series of weekly reports by the Co-Chairmen of the Workshop.

39. He appreciated the work done by the Co-Chairmen of the workshop and also acknowledged the dedication shown by the members of the Committee in the exchange of views during the negotiations. It was timely that the Group of 77—the largest group, consisting of more than two thirds of the Conference—had succeeded in arriving at a consensus in order to reformulate its position on the system of exploitation, especially on article 22 and certain important provisions of annex I. The aim appeared to have been to meet some of the concerns expressed by the industrialized countries. Other drafts emerging from some of the technologically developed or industrialized countries, both East and West, had helped to clear the air on the concrete nature of the diversity of perspectives within the Committee. The attempts at negotiating from those positions had provoked situations which, in spite of their usefulness in underlining those differences, had failed to produce any new approaches which might help resolve the problems at the centre of the Committee's work.

40. Delegations had apportioned blame for that failure to attain a consensus or, in some cases, even to begin a real negotiating process. It was a matter of regret to himself and the Bureau that yet another session had passed without the Committee's coming any closer to obtaining a consensus text than it had at the preceding session. Perhaps the only consola-

tion was that all parties recognized the gravity of the situation. That might well have a favourable influence on the work of the next session.

41. He shared the emergent consensus view that the negotiations, rather than a procedural debate, should begin on the very first day of the next session. In that spirit, he hoped he could count on the co-operation of all delegations to ensure that the Bureau would be able to pursue its mandate of helping to organize the negotiations in the usual way. The delegations must not just speak of negotiations, they must also come determined to carry them out. All the data were already available. If the work of elaborating the complex technical and juridical details was to succeed, members would have to come prepared to take quick political decisions, which alone could make the desired result possible.

42. He was certain that there was no consensus regarding an intersessional meeting of the Committee, but that did not keep members from making good use of the interim for consultations and negotiations, especially between the delegations which held opposing views. He was prepared to encourage productive exchanges of views, especially if their purpose was to find solutions rather than harden positions or deepen dif-

ferences. No one need be afraid of such activities, especially since they would be neither official nor semi-official. All decisions on the Convention would be taken at the Conference, in accordance with the principles of universality and sovereign equality. He hoped that the next session would be the most productive and decisive one ever held.

43. He was certain that he was expressing the feelings of the Committee in stating that the members were looking forward to the final instalments of the report which they had requested on financing the Enterprise and that they hoped that those instalments would be very helpful, as the preliminary note of the Secretary-General on that subject (A/CONF.62/C.1/L.17) had been. Members of the Committee wanted the final study to be of the same quality. The other study relating to the Authority itself would also be awaited with interest. He expressed the hope that all delegations would receive the two studies well before the next session.

44. After an exchange of courtesies, the Chairman declared the session closed.

The meeting rose at 5.20 p.m.